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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/138,091	08/21/1998	CAMELLIA W. ADAMS	9491-013-27	3668

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EXAMINER

SPECTOR, LORRAINE

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 03/05/2002

27

Please find below and/or attached an Office communication concerning this application or proceeding.



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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER

APT. UNIT PAPER NUMBER

27

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed 3/25/02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing of an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: None

Claims objected to: 46-48, 50-57

Claims rejected: 49

However:

- ☐ Applicant's response has overcome the following rejection(s): _____

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because See Attached
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.
- ☐ Other

Attachment to Advisory Action, Paper Number 27:

Applicants urge that, the elected species having been found allowable over the prior art, that the Examiner is required to search and examine all additional species of the Markush group, citing MPEP 803.02 for support. This argument has been fully considered but is not deemed persuasive because the claim is not a proper Markush grouping, as it lacks unity of invention. As set forth in MPEP 803.02, unity of invention exists where compounds within a Markush group (1) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility. In this case, there is no substantial structural feature disclosed as being essential to the utility of encoding an agonist antibody, variant or fragment thereof which binds to human c-mpl. Thus, there is no unity of invention here. Further, the search and examination of all species would constitute an undue burden due to the number of sequences which must be searched.

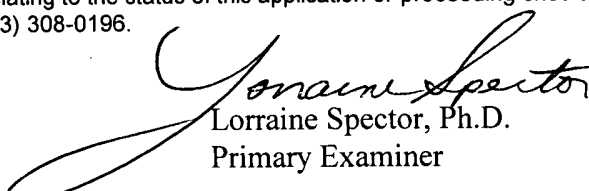
With respect to the burden on the Examiner under the election of species requirement that was made, it is noted that there remains no generic claim. There is no provision for examination of additional species where there is no generic claim found allowable. The Examiner reminds applicants that generic claims were found not to be allowable in paper number 17, mailed 11/27/00. Accordingly, the Examiner's position remains that the elected species is allowable over the prior art, and, there being no allowable generic claim, there is no requirement for examination of additional species.

Advisory Information:

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Lorraine M. Spector, whose telephone number is (703) 308-1793. Dr. Spector can normally be reached Monday through Friday, 9:00 A.M. to 5:30 P.M.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Gary Kunz, can be reached at (703)308-4623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at telephone number (703) 308-0196.


Lorraine Spector, Ph.D.
Primary Examiner

LMS
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3/4/02